

COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

MEETING SUMMARY

Virginia Housing Commission Municipal Water Issue Sub-Work Group 5th Floor West Conference Room, General Assembly Building May 2, 2011 10:00 A.M.

Members Present: Brian Gordon, Tyler Craddock, Steven Edgemon, Tad Jones, Phil Boykin, Bill Ernst, Martin Johnson, Chip Dicks, Ted McCormack, Preston Bryant, Tom Frederick, Mark Flynn, John Lan, Roger Wiley, Mike Toalson

Staff Present: Elizabeth Palen and Jillian Malizio

I. Welcome and Call to Order

- Delegate Glenn Oder; *Chair*
 - The meeting was called to order at 10:06 AM.
 - Introductions

II. HB 2455; Municipal Utility Services (Comstock, 2011)

- **Delegate Marshall**—Asked whether the discussion should begin by focusing on this specific bill or the broader issue behind the bill.
- **Chip Dicks**; Virginia Association of Realtors (VAR)—The broader issue is that Water and Sewer Authorities have the power to put a lien on property owners' property for the failure of the tenant to pay the water bill. In essence, Water and Sewer Authorities are making the landowner pay the previous tenant's bill, and they are putting liens on properties with no notice. There was some legislation a few years ago that required Water and Sewer Authorities to give notice thirty days in advance to the tenant. There is another Code section that speaks directly to Water and Sewer Authorities, and they believe this Code section controls this provision and does not require them to get a judgment before putting a lien on the property. This year there were many pieces of legislation, and some proposed to abolish lien authority altogether. This would negatively affect the city's municipal bond rating, because one of the criteria rating agencies use is the ability of Water and Sewer authorities to put a lien on the property. Lien authority cannot be entirely abolished. The General Assembly's approach this year would require some level of

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due diligence from Water and Sewer Authorities with a provision that requires notice before putting a lien on property. The difference between the two Code sections is that one applies to Water and Sewer Authorities only and the other applies to local government. It costs almost as much to go to court for fees as it does to pay three months worth of back fees. A typical bill is \$35/month, with \$50/month in the high range, and \$150 as the maximum; it would cost much more to go to court. There was also some discussion about looking at a tax check-off program or requiring a deposit. It was also suggested that the service be required to be in the landlord's name, but landlords object to doing this because they are not incurring the bills.

- **Delegate Marshall**—In my district I have heard that the problem lies in Henry County, and may not be a consistent issue across the Commonwealth, maybe we should not try to fix something that is not broken across the entire Commonwealth.
- **Chip Dicks**—Delegate Dance has this problem in Dinwiddie County. Liens are routinely put on landlords' property within the first thirty days of the tenant's delinquency. This creates two problems: 1) once the creditor has been paid the landlord has to have the lien removed, and this creates filing fees; 2) in the meantime, the landlords have a mortgage with a judgment on the property, which puts them in violation of their loan agreements.
- **Delegate Oder**—Interesting, seems like there is a marketplace for someone to go to an apartment owner and say we'll bond you for this much a month. We'll make sure if anyone doesn't pay the bill, we'll pay it and then go after them,
- **Chip Dicks**—Apartment communities with 300 units use sub-metering. The properties are retrofitted so that every one of the units has a separate meter and the tenants pay directly. The real problem is with single family properties that are not able to be sold and are being rented.
- **Delegate Marshall**—So the problem is with single family properties?
- **Chip Dicks**—Yes, I think that seems to be the consensus—and the problem has been exacerbated by the current housing market.
- **Delegate Marshall**—Asked whether water is the only utility for which a lien can be put on the properties or if it can also be done with gas, electricity, cable, and trash.
- **Chip Dicks**—Liens can only be put on properties for water and sewer delinquencies.
- **Mark Flynn**, Virginia Municipal League (VML)/Housing Commission Citizen Member—For other utilities, if tenants don't pay their bills in location one, they will not be able to get service in their next location. Water and Sewer Authorities don't have that type of control.
- **Preston Byrant**, McGuire Woods Consulting—Agreed that Mr. Dicks' explanation is fair and accurate. Also pointed out that there are two conflicting Code sections that need to be aligned.
- **Delegate Oder**—Asked if it is possible for those two Code sections to come together.
- **Preston Bryant**—Responded that he thought it was possible.
- **Chip Dicks**—Agreed with Mr. Bryant, but pointed out that during the time crunch of the session there is not much time for stakeholders to sit down and flesh out the

Code sections to make them align. Some people argue that there should not be a lien authority, but there are those who say the water and sewer authority needs some way to obtain payment. Although they are two extremes, Chip believes there is room in the middle for the two to come together. Explained that he is looking at non-water and sewer entities to explore how those authorities conduct their businesses.

- **Preston Bryant**—The two Code sections are §§ 15.2-5139 and 21-184.
- **Delegate Oder**—Advised the work group that they will work on this issue throughout the summer, receive comments, and meet again in August. Asked whether further action needed to be taken on the Comstock bill.
- **Steve Edgemon, Fairfax Water**—Fairfax County has looked at the Falls Church rates within this context.
- **Delegate Marshall**—Asked if there is a lawsuit pending.
- **Steve Edgemon**—There are some lawsuits by homeowner's associations that are currently in the court system. The issue is that the Falls Church Water Authorities were charging a rate of return in addition to transfers and costs. The courts decided that this was a tax on the people in Fairfax County, and held the authorities could not charge people in this way.
- **Ted McCormack, Virginia Association of Counties (VACO)**—There may have been some remedies suggested by the court, but the issue there was that the Falls Church Water Authority didn't notify the customers that a remedy was available.
- **Delegate Oder**—Delegate Comstock needs to know H.B. 2455 (2010) was discussed and the conclusion of the committee was that no further action be taken on the bill, and that if she has any further issues to please let the Commission know of those issues.

III. Public Comment

- There was no public comment

IV. Adjourn

- The meeting was adjourned at 10:40.